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No. 843

In the Supreme Court of the United States

OCTOBER TERM, 1940

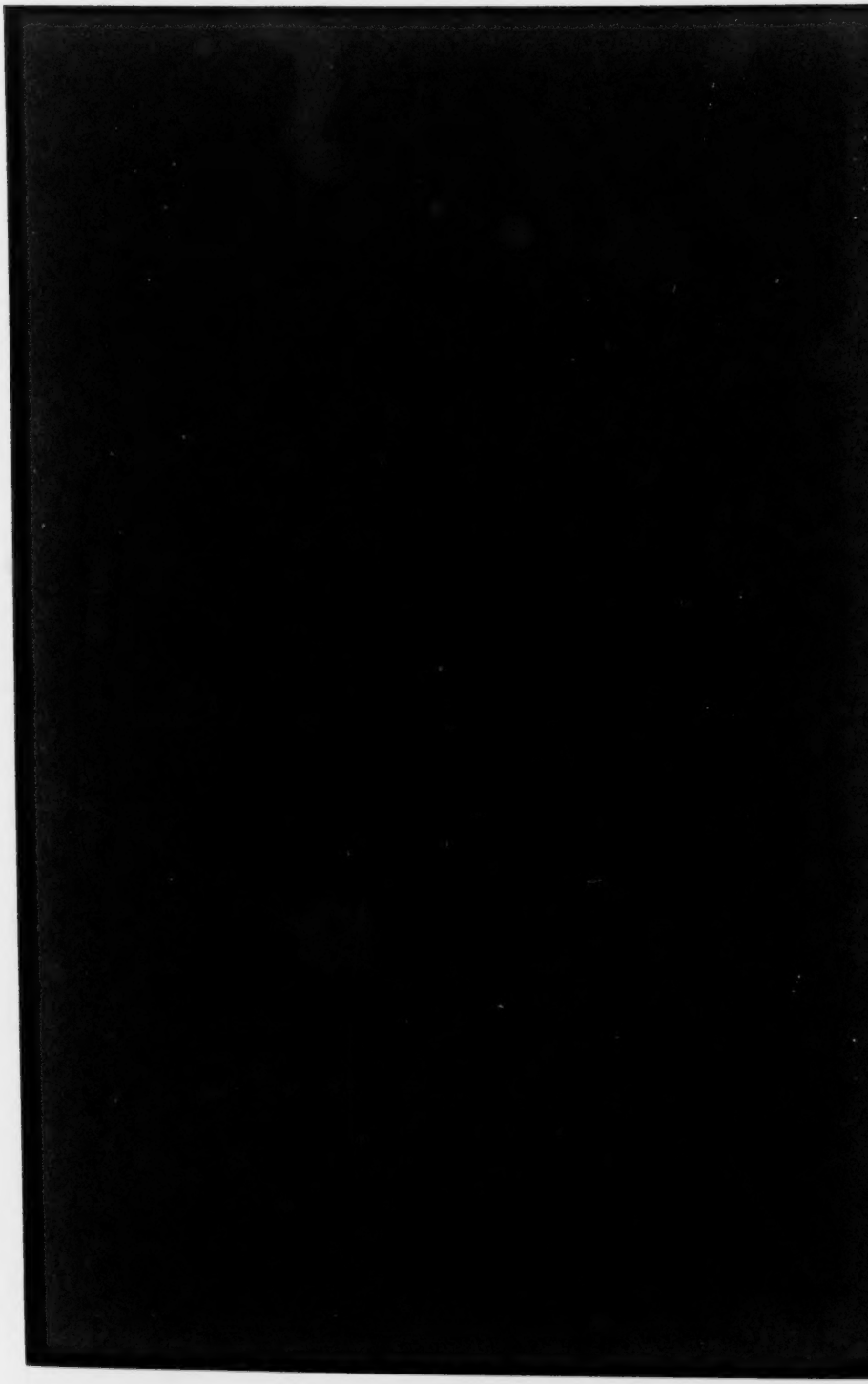
COUNTY OF FRESNO AND W. ALBERT S. HARRISON, JR., ASSESSOR OF SAID COUNTY, ET AL., BOARD OF CALIFORNIA, PETITIONERS

v.

[illegible]

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE RESPONDENT IN OPPOSITION



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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 341

COUNTY OF FRESNO AND WALTER S. HENDERSON, JR., ASSESSOR OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA, PETITIONERS

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court (R. 22) is not reported. The opinion of the Circuit Court of Appeals (R. 43–50) is reported in 112 F. (2d) 639.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 12, 1940. (R. 51.) The petition for a writ of certiorari was filed on August

15, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the County of Fresno, a political subdivision of the State of California, may seize and sell for nonpayment of personal property taxes cotton pledged to the Commodity Credit Corporation, a wholly owned corporate instrumentality of the United States, unless such seizure and sale is made expressly subject to and in recognition of the prior lien interests of the Commodity Credit Corporation in the cotton.

STATUTE INVOLVED

Sections 3716 and 3717 of the Political Code of California are set forth, to the extent material, in the opinion of the court below. (R. 48, 49.)

STATEMENT

This action for a declaratory judgment was instituted in the District Court by the respondent herein, Commodity Credit Corporation, a corporate instrumentality of the United States engaged in making loans upon the security of cotton and other agricultural products, whose general activities and the legal authority therefor are more fully set forth in the amended bill of complaint. (R. 4–12.) The defendants' motion to dismiss the amended bill of complaint (R. 21),

was denied (R. 22), and the District Court entered judgment on the pleadings. (R. 23–25.) The amended bill discloses the following material facts:

On March 7, 1938, the Commodity Credit Corporation had in its possession, warehouse receipts for cotton stored in a warehouse belonging to Valley Compress Company, at Pinedale, Fresno County, California. It had acquired possession thereof through loans made to the producers of that cotton, and had liens thereon. Similarly, as a result of further loans during the period March 7, 1938 to June 21, 1938, the Commodity Credit Corporation acquired possession and liens upon additional cotton likewise stored at the same warehouse. (R. 12–14.)

During the period March 7–June 21, 1938, the Assessor of Fresno County, levied assessments at full value upon all the cotton so deposited in the aforementioned warehouse (R. 14), and on June 21, 1938 seized possession of 20,990 bales of such cotton which he proposed to sell at public auction to satisfy the taxes thus assessed together with costs. (R. 15.) The 20,990 bales included cotton on which loans had been made prior to March 7, 1938, as well as cotton on which loans had been made between March 7, and June 21, 1938.[1] (R.

[1] In the latter category some of the loans had been made before the levy of assessment, while in some instances they were made after such levy of assessment. (R. 15.)

15.) The market value of the cotton was, at all times material here, less than the amounts advanced by the Commodity Credit Corporation thereon. (R. 15–16.)

The bill further alleges that the Assessor threatens to sell the cotton without in any way reserving or protecting the rights, liens and interests of the Commodity Credit Corporation. (R. 16.) The bill names as parties defendant the Assessor of Fresno County and the County itself, and prays for a declaratory judgment (R. 19) "respecting the assessment of taxes by defendants on the cotton on which plaintiff has made advances and holds warehouse receipts as aforesaid, and respecting the seizure and sale of said cotton in the event of the nonpayment of such taxes, and that this Court adjudge and decree that all such assessments, seizures and sales are illegal and void unless the same are expressly made subject to the rights, interests and liens of plaintiff in and to said cotton."

The District Court denied a motion to dismiss, and entered judgment in favor of the Commodity Credit Corporation. The Circuit Court of Appeals affirmed, holding that under California law, no superior lien attached in favor of the County, and that therefore the cotton could not be sold for taxes without first making provision for the existing liens of the Commodity Credit Corporation.

ARGUMENT

The petition attempts to raise sweeping issues with respect to the constitutionality of the Commodity Credit Corporation. However, we believe that the case was correctly decided below upon a narrow question of California law, and does not require consideration of the many issues presented in the petition. The Circuit Court of Appeals simply held that the lien of the Commodity Credit Corporation, like the lien of any private person or corporation, must be recognized under California law. Its decision in this respect is in accord with California decisions and does not present any question calling for further review by this Court.

1. The question whether, under California law, personal property taxes are entitled "*ex proprio vigore*" or by statute to priority in payment over a private lien which is prior in time is one of purely local law. *Games* v. *Dunn*, 14 Pet. 322, 327; *United States* v. *Madison County, Ark.*, 293 Fed. 739, 742 (C. C. A. 8th); *State Railroad Tax Cases*, 92 U. S. 575, 618. The conclusion of the court below that, in California, personal property taxes are not liens on the specific personal property taxed and that, under California law, those taxes are not "*ex proprio vigore*" entitled to payment in priority over private liens which are prior in time is supported by the decisions of the Supreme

Court of California. *Guinn* v. *McReynolds,* 177 Cal. 230, 232.

The petitioners point to no California statute providing that personal property taxes constitute a lien upon the specific personal property taxed.[2] In substance the petitioners' contention is that, irrespective of statute, taxes are inherently a lien upon specifically taxed property or other property of a taxpayer. The principal of "superior dignity," however, does not obtain in California, which follows the almost universally accepted rule that taxes are not inherently a lien upon specifically taxed property or other property of a taxpayer unless expressly made so by statute. 3 Cooley, *Taxation* (4th Ed., 1924), Section 1230, pp. 2451–2453; Peppin, *Priority of Tax and Special Assessment Liens,* 23 Cal. L. Rev. 264, 267, 270.

California Loan Etc. Co. v. *Weis,* 118 Cal. 489, 50 Pac. 697; *O'Dea* v. *Mitchell,* 144 Cal. 374, 381, 77 Pac. 1020, 1022; *Woodill & Hulse Elec. Co.* v. *Young,* 180 Cal. 667, 669, 670, 182 Pac. 422, 424, and *San Mateo County Bank* v. *Dupret,* 124 Cal. App. 395, 396, 12 P. (2d) 669, 670, do not support the view that the "superior dignity" principle prevails in California. Those cases arose under statutes which expressly provided a lien for the taxes and the question in those cases was the relative pri-

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[2] That there was no such statute was conceded below. (R. 46.)

ority between admitted liens which is a totally different question from the one at bar. Moreover, even if *California Loan Etc. Co.* v. *Weis, supra,* and *O'Dea* v. *Mitchell, supra,* may be considered as holding that tax liens are inherently fixed liens, those decisions were superseded by *Guinn* v. *McReynolds, supra. RCA Photophone Inc.* v. *Huffman,* 5 Cal. App. (2d) 401, not only is a decision of a California intermediate court, but is not remotely in point here. In that case seizure and sale of personal property for the payment of taxes assessed under Section 3628 of Deering's Political Code of California to one "in whose possession or control it was" was upheld although the legal title to the property was in another. We submit that the decision of the Supreme Court of California on the question of local law in issue is here controlling. *Des Moines Bank* v. *Fairweather,* 263 U. S. 103, 105.

2. The petitioners' contention that Section 3716 of Deering's Political Code of California (1937) provides a statutory priority for personal property taxes over prior liens is groundless. As pointed out by the court below, while Section 3716 of Deering's Political Code of California provides that every tax has the effect of a judgment against the person, the only lien which can result therefrom is the one which stems from title upon an execution duly levied against property of the delinquent taxpayer. Section 3717 of Deering's Political Code

of California (1937) provides merely that (p. 617):

> Every tax due upon personal property is a lien upon the *real* property of the owner thereof, * * *. (Italics supplied.)

No other lien is provided for personal property taxes.

CONCLUSION

The decision of the court below on a question of purely local law is in harmony with the decisions of the Supreme Court of California and no important general question is presented by the petition. There is no conflict of authority and the petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER, 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940